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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

CONDADO PLAZA ACQUISITION LLC, *et al.*,¹

Debtor.

)
) Chapter 11
)
) Case No. 20-12094 (MEW)
)
) Jointly Administered
)

**DECLARATION OF AARON MARKS IN SUPPORT OF
POSADAS DE PUERTO RICO ASSOCIATES, L.L.C.'S MOTION
TO DISMISS THE CHAPTER 11 CASES OF CONDADO PLAZA ACQUISITION LLC,
CONDADO PLAZA ACQUISITION LAGOON, LLC, AND CONDADO PLAZA
ACQUISITION OCEAN, LLC, OR, IN THE ALTERNATIVE, GRANTING RELIEF
FROM THE AUTOMATIC STAY**

¹ The last four digits of CPA employer identification number are 2094, the last four digits of Ocean's employer identification number are 2095 and the last four digits of Lagoon's employer identification number are 2096. Each of the Debtors maintains a mailing address at 1325 Avenue of the Americas, 28th Floor, New York, New York 10019.

I, **AARON MARKS**, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746, as follows:

1. I am a partner of the law firm Kirkland & Ellis LLP, counsel for Posadas de Puerto Rico Associates, L.L.C. (“Posadas”). I am also counsel to Posadas in the underlying state court litigation. I submit this Declaration in support of Posadas’ Motion to Dismiss the Chapter 11 Cases of Condado Plaza Acquisition LLC, Condado Plaza Acquisition Lagoon, LLC, and Condado Plaza Acquisition Ocean, LLC (“Condado”), or, in the Alternative, Granting Relief From the Automatic Stay.

2. Attached hereto as **Exhibit 1** is a true and correct copy of the Complaint, as filed with the Supreme Court of the State of New York, County of Monroe, at NYSCEF Doc. 1.

3. Attached hereto as **Exhibit 2** is a true and correct copy of the Proposed Order to Show Cause with Temporary Restraining Order, as filed with the Supreme Court of the State of New York, County of Monroe, at NYSCEF Doc. 13.

4. Attached hereto as **Exhibit 3** is a true and correct copy of a Notice of Entry, as filed with the Supreme Court of the State of New York, County of Monroe, at NYSCEF Doc. 71.

5. Attached hereto as **Exhibit 4** is a true and correct copy of the Notice of Appeal, as filed with the Supreme Court of the State of New York, County of Monroe, at NYSCEF Doc. 72.

6. Attached hereto as **Exhibit 5** is a true and correct copy of Condado’s Verified Answer to Complaint and Counterclaims, as filed with the Supreme Court of the State of New York, County of Monroe, at NYSCEF Doc. 75.

7. Attached hereto as **Exhibit 6** is a true and correct copy of an Affirmation of Aaron Marks, as filed with the Supreme Court of the State of New York, County of Monroe, at NYSCEF Doc. 99.

8. Attached hereto as **Exhibit 7** is a true and correct copy of the Determination that a Public Health Emergency Exists issued by Alex M. Azar II, Secretary of the U.S. Department of Health and Human Services, pursuant to Section 319 of the Public Health Services Act, 42 U.S.C. § 247d, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit A to the Affirmation of Aaron Marks, at NYSCEF Doc. 100.

9. Attached hereto as **Exhibit 8** is a true and correct copy of a press release issued by the CDC on February 26, 2020, entitled “CDC Confirms Possible Instance of Community Spread of COVID-19 in U.S.,” as downloaded from the CDC’s website, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit B to the Affirmation of Aaron Marks, at NYSCEF Doc. 101.

10. Attached hereto as **Exhibit 9** is a true and correct copy of the Opening Remarks of the Director-General of the World Health Organization from the media briefing on March 11, 2020, as accessed on August 25, 2020 at <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit C to the Affirmation of Aaron Marks, at NYSCEF Doc. 102.

11. Attached hereto as **Exhibit 10** is a true and correct copy of Condado’s Order to Show Cause submitted to the Appellate Division of the Supreme Court of the State of New York, Fourth Judicial Department, on July 20, 2020, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit D to the Affirmation of Aaron Marks, at NYSCEF Doc. 103.

12. Attached hereto as **Exhibit 11** is a true and correct copy of Condado’s Memorandum of Law in Support of Their Emergency Application for Interim Stay and to Modify, Limit, Vacate or Stay the Preliminary Injunction submitted to the Appellate Division of the

Supreme Court of the State of New York, Fourth Judicial Department, on July 20, 2020, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit E to the Affirmation of Aaron Marks, at NYSCEF Doc. 104.

13. Attached hereto as **Exhibit 12** is a true and correct copy of the letter dated July 24, 2020 from Ivan E. Lee, Principal Appellate Court Attorney, informing the parties that the Honorable Nancy E. Smith declined to sign Condado's Order to Show Cause, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit F to the Affirmation of Aaron Marks, at NYSCEF Doc. 105.

14. Attached hereto as **Exhibit 13** is a true and correct copy of the e-mail that I sent to Defendants' counsel, Anthony Dougherty and Jonathan E. Temchin, on August 18, 2020, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit G to the Affirmation of Aaron Marks, at NYSCEF Doc. 106.

15. Attached hereto as **Exhibit 14** is a true and correct copy of the e-mail that I received from Anthony Dougherty on August 19, 2020, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit H to the Affirmation of Aaron Marks, at NYSCEF Doc. 107.

16. Attached hereto as **Exhibit 15** is a true and correct copy of the e-mail that I sent to Defendants' counsel, Anthony Dougherty and Jonathan E. Temchin, on August 20, 2020, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit I to the Affirmation of Aaron Marks, at NYSCEF Doc. 108.

17. Attached hereto as **Exhibit 16** is a true and correct copy of the temporary restraining order entered on August 14, 2020, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit K to the Affirmation of Aaron Marks, at NYSCEF Doc. 110.

18. Attached hereto as **Exhibit 17** is a true and correct copy of an Affidavit of Byron Blount, as filed with the Supreme Court of the State of New York, County of Monroe, at NYSCEF Doc. 111.

19. Attached hereto as **Exhibit 18** is a true and correct copy of the Agreement of Purchase and Sale between Posadas and Condado (“the Agreement”), as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit A to the Affidavit of Byron Blount, at NYSCEF Doc. 112.

20. Attached hereto as **Exhibit 19** is a true and correct copies of the Notices of Assignment, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit B to the Affidavit of Byron Blount, at NYSCEF Doc. 113.

21. Attached hereto as **Exhibit 20** is a true and correct copy of the December 18, 2019 Notice of Adjournment, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit C to the Affidavit of Byron Blount, at NYSCEF Doc. 114.

22. Attached hereto as **Exhibit 21** is a true and correct copy of the First Amendment to the Agreement, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit D to the Affidavit of Byron Blount, at NYSCEF Doc. 115.

23. Attached hereto as **Exhibit 22** is a true and correct copy of the Second Amendment to the Agreement, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit E to the Affidavit of Byron Blount, at NYSCEF Doc. 116.

24. Attached hereto as **Exhibit 23** is a true and correct copy of the Third Amendment to the Agreement, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit H to the Affidavit of Byron Blount, at NYSCEF Doc. 119.

25. Attached hereto as **Exhibit 24** is a true and correct copy of an April 8, 2020 e-mail from Condado's principal, Roys Poyiadjis, to Byron Blount, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit I to the Affidavit of Byron Blount, at NYSCEF Doc. 120.

26. Attached hereto as **Exhibit 25** is a true and correct copy of the May 4, 2020 letter from Posadas to Condado providing notice of a new closing date, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit J to the Affidavit of Byron Blount, at NYSCEF Doc. 121.

27. Attached hereto as **Exhibit 26** is a true and correct copy of the May 6, 2020 letter from Condado to Posadas rejecting the new closing date, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit K to the Affidavit of Byron Blount, at NYSCEF Doc. 122.

28. Attached hereto as **Exhibit 27** is a true and correct copy of the May 7, 2020 letter from Condado to Posadas again refusing to close, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit L to the Affidavit of Byron Blount, at NYSCEF Doc. 123.

29. Attached hereto as **Exhibit 28** is a true and correct copy of the May 7 time is of the essence letter from Posadas' counsel to Condado, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit M to the Affidavit of Byron Blount, at NYSCEF Doc. 124.

30. Attached hereto as **Exhibit 29** is a true and correct copy of Posadas' notice of termination, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit N to the Affidavit of Byron Blount, at NYSCEF Doc. 125.

31. Attached hereto as **Exhibit 30** is a true and correct copy of Condado's response to Posadas' notice of termination, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit O to the Affidavit of Byron Blount, at NYSCEF Doc. 126.

32. Attached hereto as **Exhibit 31** is a true and correct copy of an Affidavit of Carlos A. Valldejuly, as filed with the Supreme Court of the State of New York, County of Monroe, at NYSCEF Doc. 127.

33. Attached hereto as **Exhibit 32** is a true and correct copy of the original Spanish and official English translation of executive order OE-2020-020 issued by the Governor of Puerto Rico, Hon. Wanda Vázquez Garced, on March 12, 2020, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit A to the Affidavit of Carlos A. Valldejuly, at NYSCEF Doc. 128.

34. Attached hereto as **Exhibit 33** is a true and correct copy of the original Spanish and official English translation of executive order OE-2020-023 issued by the Governor of Puerto Rico on March 15, 2020, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit B to the Affidavit of Carlos A. Valldejuly, at NYSCEF Doc. 129.

35. Attached hereto as **Exhibit 34** is a true and correct copy of the original Spanish and official English translation of executive order OE-2020-038 issued by the Governor of Puerto Rico on May 1, 2020, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit C to the Affidavit of Carlos A. Valldejuly, at NYSCEF Doc. 130.

36. Attached hereto as **Exhibit 35** is a true and correct copy of the original Spanish and English translation of an e-mail chain between Posadas' Puerto Rico counsel (O'Neill & Borges, LLC) and Manuel E. Avila de Jesus, Esq., director of the Puerto Rico Notarial Inspections Office,

as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit D to the Affidavit of Carlos A. Valldejuly, at NYSCEF Doc. 131.

37. Attached hereto as **Exhibit 36** is a true and correct copy of the original Spanish and English translation of the Complaint in *Condado Plaza Acquisition, LLC, Condado Plaza Acquisition Lagoon, LLC and Condado Plaza Acquisition Ocean, LLC v. Posadas de Puerto Rico Associates, LLC and Fidelity National Title Insurance Company*, No. SJ2020CV02703 filed in the Puerto Rico Court (“the Puerto Rico action”), as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit E to the Affidavit of Carlos A. Valldejuly, at NYSCEF Doc. 132.

38. Attached hereto as **Exhibit 37** is a true and correct copy of the original Spanish and English translation of Condado’s *ex parte* motion for a *lis pendens* and a temporary restraining order in the Puerto Rico action, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit F to the Affidavit of Carlos A. Valldejuly, at NYSCEF Doc. 133.

39. Attached hereto as **Exhibit 38** is a true and correct copy of the original Spanish and English translation of Condado’s motion filed in the the Puerto Rico action for a preliminary injunction to postpone the closing, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit G to the Affidavit of Carlos A. Valldejuly, at NYSCEF Doc. 134.

40. Attached hereto as **Exhibit 39** is a true and correct copy of the original Spanish and English translation of the *orden de anotación de demanda (lis pendens)* issued by the Puerto Rico Court in the Puerto Rico action, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit H to the Affidavit of Carlos A. Valldejuly, at NYSCEF Doc. 135.

41. Attached hereto as **Exhibit 40** is a true and correct copy of the original Spanish and English translation of the order dismissing the Puerto Rico action, as filed with the Supreme Court

of the State of New York, County of Monroe as Exhibit I to the Affidavit of Carlos A. Valldejuly, at NYSCEF Doc. 136.

42. Attached hereto as **Exhibit 41** is a true and correct copy of the original Spanish and English translation of the Notice of Appeal and brief filed in the Puerto Rico action, as filed with the Supreme Court of the State of New York, County of Monroe as Exhibit J to the Affidavit of Carlos A. Valldejuly, at NYSCEF Doc. 137.

43. Attached hereto as **Exhibit 42** is a true and correct copy of the Order to Show Cause, as filed with the Supreme Court of the State of New York, County of Monroe, at NYSCEF Doc. 150.

44. Attached hereto as **Exhibit 43** is a true and correct copy of the Order directing Condado and Roys Poyiadjis to show cause why it should not be held in contempt of the anti-suit injunction, as filed with the Supreme Court of the State of New York, County of Monroe, at NYSCEF Doc. 152.

45. Attached hereto as **Exhibit 44** is a true and correct copy of Posadas' September 2, 2020 letter to the New York state court, as filed with the Supreme Court of the State of New York, County of Monroe, at NYSCEF Doc. 157.

46. Attached hereto as **Exhibit 45** is a true and correct copy of Condado's September 2, 2020 letter to the New York state court, as filed with the Supreme Court of the State of New York, County of Monroe, at NYSCEF Doc. 158.

47. Attached hereto as **Exhibit 46** is a true and correct copy of the Reply Affidavit of Roys Poyiadjis, as filed with the Supreme Court of the State of New York, County of Monroe, at NYSCEF Doc. 167.

48. Attached hereto as **Exhibit 47** is a true and correct copy of an email from the law clerk for Justice Odorisi to the parties, dated September 8, 2020.

Dated: Scarsdale, New York
September 11, 2020

/s/ /Aaron Marks, P.C.
Aaron Marks, P.C.